

### ***Remarks***

Upon entry of the foregoing amendment, claims 1-4, 7-11, 14-16, 19-23, and 26-31 are pending in the application, with 1, 8, 15, and 20 being the independent claims. Claims 1-4, 7-11, 14-16, 19-23, 26, and 27 are sought to be amended. Applicant reserves the right to prosecute similar or broader claims, with respect to the amended claims, in the future. New claims 28-31 are sought to be added. The Specification as filed on March 3, 2004 is also sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendments and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

### ***Rejection under 35 U.S.C. § 102***

#### Claims 1-4, 7-11, 14-16, 19-23, and 26-27

Claims 1-4, 7-11, 14-16, 19-23, and 26-27 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by United States Patent Publication No. 2001/0012783 to Peeters et al. ("Peeters"). Applicant respectfully traverses the rejection and provides the following arguments to support patentability.

Applicant has amended independent claim 1 to substantially incorporate at least some of the features as recited by dependent claim 3. More specifically, Applicant has amended independent claim 1 to recite at least the feature of "*at least one of the plurality of carriergroup parameters being a worst case parameter of the plurality of carriers within the at least one dynamically variable size carrier group.*" In regards to dependent claim 3, the Office Action dated June 18, 2009 (Office Action) alleges that "Peeters further discloses that a bit number at which the carrier with the lowest index in the subset

should be transmitted (paragraph 0020, lines 6-7)(the examiner interpret[s] that the lowest index in the subset means the carrier with the lowest bit loading number, it means the carrier with the lowest signal-to-noise ratio, which is the worst case SNR)." Office Action, pp. 14-15.

Applicant respectfully disagrees with this characterization of Peeters. Peeters merely provides that the carriers in the subsets are given a numerical index value solely for identification purposes. For example, a multi-carrier system with N carriers indexes each of the carriers "from 0 to N-1." Peeters, ¶ 0005. The carrier with the lowest index in the subset refers to the carrier having the smallest numerical index value. For instance, as shown in FIG. 1 of Peeters, the carrier with the lowest index in SUBSET1 refers to the carrier  $f_0$ , while the carrier with the lowest index in SUBSET2 refers to the carrier  $f_{512}$ . Nowhere does Peeters teach or suggest "the lowest index in the subset means the carrier with the lowest bit loading number, it means the carrier with the lowest signal-to-noise ratio, which is the worst case SNR" as alleged by the Examiner. In fact, Peeters merely determines "a gain value at which the carrier with the lowest index in the subset should be transmitted and a gain value at which the carrier with the highest index in the subset should be transmitted." Peeters, ¶ 0020. Nowhere does Peeters teach or suggest that the gain value at which the carrier with the lowest index is the "carrier with the lowest signal-to-noise ratio" as alleged in the Office Action. Rather, the carrier with the lowest index merely represents the carrier having the lowest numerical index, namely an arbitrarily assigned numerical value that is independent of any physical characteristics of the carrier itself or the carriers within the subset.

Therefore, Peeters does not teach or suggest at least the feature of "*least one of the plurality of carriergroup parameters being a worst case parameter of the plurality of carriers within the at least one dynamically variable size carrier group*" as recited by

independent claim 1 as amended. Independent claims 8, 15, and 20 each recite a substantially similar feature as independent claim 1 that is likewise not taught or suggested by Peeters. For a rejection to be sufficient under 35 U.S.C. § 102, "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131. The absence of any claimed element from the reference negates anticipation. Atlas Powder Co. v. E.I. du Pont de Nemours & Co., 750 F.2d 1569, 1574 (Fed. Cir. 1984). Consequently, Peeters cannot anticipate independent claims 1, 8, 15, and 20. Dependent claims 2-4, 7, 9-11, 14, 16, 19, 21-23, and 26-27 are likewise not anticipated by Peeters for the same reasons as the independent claims from which they depend and further in view of their own respective features. Accordingly, Applicant respectfully request that the rejection of claims 1-4, 7-11, 14-16, 19-23, and 26-27 under 35 U.S.C. § 102(b) be reconsidered and withdrawn.

***New claims***

Claims 28-31

New claims 28-31 have been added. From the discussion above, Applicant has traversed the rejections to independent claims 1, 8, and 20. Dependent claims 28-31 are likewise allowable for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features.

***Conclusion***

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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